IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6953 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYED UMARMIYA MITHAMIYA & ORS.

Versus

DIRECTOR GENERAL OF POLICE & ORS.

Appearance:

1. Special Civil Application No. 6953 of 1991

MR SAURABH J.MEHTA for MR YN OZA for Petitioners Nos.1-17

MR ASHISH J.DESAI, AGP for Respondents Nos. 1-3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 15/09/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners before this Court are the Armed Police Constables employed under the District Superintendent of Police, Gandhinagar, the respondent No.3. The petitioners claim right to appointment/transfer as Unarmed Police Constables.

Pursuant to the public advertisement inviting applications for recruitment to the posts of Police Constable, the petitioners had appeared for such selection. On being selected, the petitioners were placed at Serial Nos.28 to 49 on the merit-list. The 27 existing vacancies in the cadre of Unarmed Police Constable were filled-in by appointment of selected candidates at Serial Nos.1 to 27. The 22 existing vacancies in the cadre of Armed Police Constable were filled-in by appointment of the present petitioners, the candidates selected and placed on the merit-list at Serial Nos.28 to 49. Another 103 selected candidates were placed on the wait-list for appointment on future vacancies. The said list was operative for a period of one year. During the subsistence of the said wait-list, 57 posts of Unarmed Police Constable were sanctioned under the respondent No.3. The said 57 posts of Unarmed Police Constable were filled-in by appointment of candidates from the wait-list which was then subsisting. It is the claim of the petitioners that the petitioners being higher on the merit-list, the posts of Unarmed Police Constable sanctioned in the year 1990 ought to have been offered to the petitioners. The petitioners, therefore, seek a direction that they be transferred as Unarmed Police Constables.

In support of the petition, the learned advocate Mr.Mehta has relied upon the judgments of this Court in the matters of Prakashchand Jogaram Prajapati v/s. State of Gujarat (Special Civil Application No.10594/1999 decided on 19th October, 2000; Coram: S.K.Keshote, J.) and of Rajendrasingh J.Tomar and others v/s. Director General of Police and others (Special Civil Application No.4679/1991 decided on 19th April, 2002; Coram: K.A.Puj, J.).

In the matter of Prakashchand Jogaram Prajapati (supra), the petitioners who were appointed as Armed Police Constables claimed right to allocation as Unarmed Police Constables being higher on merit-list. While the another set of selected candidates who were lower down on the merit-list were allocated as Unarmed Police Constables having regard to their higher educational qualification. The said action of the

respondent-authority was disapproved by this Court. The learned Judge directed that the said petitioners who were higher on merit-list were entitled to allocation as Unarmed Police Constables and the selected candidates lower in merit-list be posted as Armed Police Constables.

In the matter of Rajendrasingh J.Tomar (supra), a similar claim was made by the petitioners. According to the said petitioners, pursuant to the common selection procedure, the said petitioners were selected for appointment as Police Constables. The Recruitment Committee had recommended appointment of the petitioners as Unarmed Police Constables. Contrary to the said recommendation the said petitioners were appointed as Armed Police Constables. The said petitioners had agreed before the Court to forgo their seniority in the Armed Branch and to undergo the requisite training as Unarmed Police Constables. In the circumstances, the learned Judge directed that the said petitioners be posted as Unarmed Police Constables.

In my view, neither of the aforesaid judgments shall lend support to the petitioners in the present case.

It is undisputed that the selection procedure in question was a common selection procedure for appointment as Unarmed Police Constables and Armed Police Constables. It is not the case of the petitioners that they had given option or that they had shown their preference for appointment as Unarmed Police Constables. At the relevant time, the allocation for the posts of Unarmed Police Constable and Armed Police Constable was made in order of merit i.e. the first 27 selected candidates were allocated for appointment as Unarmed Police Constables and the next 22 selected candidates (the present petitioners) were allocated for appointment as Armed Police Constables. The petitioners did accept the said allocation made on 18th December, 1989. They did undergo training as Armed Police Constables and have been serving as Armed Police Constables eversince. The 57 candidates on the wait-list came to be allocated for appointment as Unarmed Police Constables in the posts which were sanctioned in the month of October, 1990. Ordinarily, such vacancies are required to be filled-in by following the recruitment procedure afresh and not by operating the wait-list prepared pursuant to the previous recruitment procedure. However, the rules regarding the operation of the wait-list and the circumstances in which the wait-list in question was operated are not before the Court. The action of the respondent No.3 in operating

the said wait-list is also not in challenge. It was a fortuitous circumstance that after the appointment of the petitioners some more posts were sanctioned. If the said sanctioned posts were filled in by appointment of the selected candidates placed on the wait-list, such appointments cannot be said to be arbitrary. No fundamental or statutory right of the petitioners can be said to have been infringed. Besides, those 57 selected candidates who were appointed as Unarmed Police Constables are also not before this Court. Their allocation for appointment as Unarmed Police Constables made as far back as on 26th November, 1990 cannot now be upset after nearly 14 years.

The petitioners did accept the appointment as Armed Police Constables. They did undergo the training as Armed Police Constables. In absence of the specific preference or option for appointment as Unarmed Police Constables, the petitioners cannot challenge their appointment as Armed Police Constables made on 18th December, 1989. In absence of any rule of interchangeability from Armed Police Constable to Unarmed Police Constable and vice-a-versa, the claim made in the present petition shall fail.

In the matter of Prakashchand Jogaram Prajapati (supra), both the set of selected candidates i.e. those appointed as Armed Police Constables and those appointed as Unarmed Police Constables were before the Court. Besides, the said petitioners had given option for their appointment as Unarmed Police Constables but, ignoring their options and merits, the other 17 candidates lower in merits were allocated as Unarmed Police Constables on the basis of their higher educational qualification.

In the matter of Rajendrasingh J.Tomar (supra), the appointment of the said petitioners as Armed Police Constables was made contrary to the recommendation made by the Recruitment Committee. Besides, the said petitioners had agreed to forgo their right to seniority and had agreed to undergo the training afresh as Unarmed Police Constable.

Thus, the facts in the above referred cases are different and distinct from the facts of the present case. The said judgments, therefore, shall not lend support to the present petitioners.

In above view of the matter, the present petition shall fail. Petition is dismissed. Rule is discharged. There shall be no order as to cost.

(Ms. R.M.Doshit, J.)

/sakkaf